

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to licensure

The Public Health Department hereby amends Chapter 131, “Emergency Medical Services—Providers—Initial Certification—Renewal and Reactivation—Authority—Complaints and Investigations,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapters 147A and 272C.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 147A and 272C and 2020 Iowa Acts, House File 2627.

Purpose and Summary

These amendments incorporate required language from 2020 Iowa Acts, House File 2627. These amendments reflect the model language for adoption that is being adopted by all the boards impacted by 2020 Iowa Acts, House File 2627, where relevant. The sections of 2020 Iowa Acts, House File 2627, that are relevant to Chapter 131 include sections 23, 24, 26 and 29 and are reflected in the amendments.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 10, 2021, as **ARC 5507C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on May 12, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on August 18, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **641—131.2(147A,147D)**, parenthetical implementation statute, as follows:

641—131.2(147A,147D,272C) Definitions.

ITEM 2. Adopt the following new definitions of “Complete criminal record,” “Conviction” and “Disqualifying offense” in rule **641—131.2(147A,147D)**:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

“*Conviction*” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Disqualifying offense*” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a certified profession, or (2) the circumstances under which an offense was committed are circumstances customary to a certified profession.

ITEM 3. Amend rule **641—131.3(147A)**, parenthetical implementation statute, as follows:

641—131.3(147A,272C) Initial certification.

ITEM 4. Adopt the following new subrules 131.3(6) and 131.3(7):

131.3(6) Fees may be waived in accordance with provisions in Iowa Code chapter 272C for individuals demonstrating income that does not exceed 200 percent of the federal poverty level.

131.3(7) Use of criminal convictions in eligibility determinations and initial licensing decisions.

a. License application. Unless an applicant for licensure petitions the department for an eligibility determination pursuant to paragraph 131.3(7) “*b*,” the applicant’s convictions will be reviewed when the department receives a completed license application.

(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

(3) An applicant must submit as a part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the department.

(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

(6) Any application fees paid will not be refunded if the license is denied.

b. Eligibility determination. An individual who has not yet submitted a completed license application may petition the department for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the department for an eligibility determination prior to applying for licensure. To petition the department for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:

- (1) A completed petition for eligibility determination form;
- (2) The complete criminal record for each of the petitioner's convictions;
- (3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the department should find the petitioner rehabilitated;
- (4) All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- (5) Payment of a nonrefundable fee of \$25.

c. Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The department's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the department's written decision will become a final order.

(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the department elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

(2) The contested case hearing shall be closed to the public and the board's review of a proposed decision shall occur in closed session.

(3) The office of the attorney general shall represent the department's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

d. Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

ITEM 5. Rescind paragraph **131.7(4)“u”** and adopt the following **new** paragraph in lieu thereof:

u. Conviction of a disqualifying offense. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction.

[Filed 6/14/21, effective 8/18/21]

[Published 7/14/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/14/21.